

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2010 No. 199**

Issued by the Authority of the Minister for Foreign Affairs

*Charter of the United Nations Act 1945*

*Charter of the United Nations (Sanctions – Somalia) Amendment Regulations 2010  
(No. 1)*

The purpose of the Regulations is to implement obligations of the United Nations Security Council (UNSC) that have arisen since the *Charter of the United Nations (Sanctions – Somalia) Regulations 2008* (the Principal Regulations) were last amended by the *Charter of the United Nations (Sanctions – Somalia) Amendment Regulations 2009 (No. 1)* on 15 May 2009.

Section 6 of the *Charter of the United Nations Act 1945* provides that the Governor-General may make regulations for, and in relation to, giving effect to decisions that the UNSC has made under Chapter VII of the Charter of the United Nations which Article 25 of the Charter requires Australia to carry out, in so far as those decisions require Australia to apply measures not involving the use of armed force.

The Principal Regulations currently implement Australia's obligations under UNSC Resolutions 733 (23 January 1992), 1356 (19 June 2001), 1425 (22 July 2002), 1744 (20 February 2007), 1844 (20 November 2008), 1846 (2 December 2008) and 1851 (16 December 2008). Pursuant to these resolutions, Australia is obliged to impose an embargo on the supply to Somalia of weapons and military equipment and associated services, subject to limited exceptions, and to freeze the funds and other financial assets owned or controlled by, and prevent funds and other financial assets being made available to, designated individuals and entities.

Since the Principal Regulations were last amended on 15 May 2009, Australia's obligations have been modified by Resolution 1916 (19 March 2010). The UNSC decided that for a period of twelve months from the date of the adoption of the new resolution, and without prejudice to humanitarian assistance programmes conducted elsewhere, the obligations imposed on UN Member States in paragraph 3 of Resolution 1844 (2 December 2008) shall not apply to the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations, its specialized agencies or programmes, humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance, or their implementing partners.

Paragraph 3 of resolution 1884 imposed an obligation on UN Member States to freeze the funds, other financial assets and economic resources owned or controlled by individuals and entities designated by the Committee established under paragraph 11 of resolution 751. This obligation is given legal effect in subregulations 13(1) and 14(1) of the Principal Regulations.

The Regulations amend the prohibition relating to dealings with designated persons or entities provided by subregulations 13(1) and 14(1) of the Principal Regulations to include this new exception.

The Regulations ensure that those aspects of the sanctions imposed by the resolutions that could not be implemented under the existing regulations are adequately implemented into domestic law.

Interdepartmental and industry consultations were undertaken during the preparations of the Principal Regulations. Public consultations on the implementation of regulations made under the *Charter of the United Nations Act 1945* are conducted annually. No specific public consultation was undertaken in relation to the present Regulations as they implement Australia's international legal obligations arising from decisions of the United Nations Security Council.

The Resolutions were adopted under Article 41 of Chapter VII of the Charter of the United Nations and the measures are binding on Australia pursuant to article 25 of the Charter. The relevant United Nations Security Council Resolutions can be found on the UN website ([www.un.org.au](http://www.un.org.au)).

Details of the Regulations are set out in the [Attachment](#).

**Attachment****Details of the *Charter of the United Nations (Sanctions – Somalia) Amendment Regulations 2010 (No. 1)*****Name of Regulations**

Regulation 1 provides that the name of the Regulations is the *Charter of the United Nations (Sanctions – Somalia) Amendment Regulations 2010 (No. 1)*.

**Commencement**

Regulation 2 provides that the Regulations commence on the day after they are registered.

**Amendment of *Charter of the United Nations (Sanctions – Somalia) Regulations 2008***

Regulation 3 provides that Schedule 1 amends the *Charter of the United Nations (Sanctions - Somalia) Regulations 2008*.

**Schedule 1 Amendments****[1] Regulation 4, after definition of *Resolution 1851***

Item [1] amends subregulation 4 by inserting a definition of “Resolution 1916”, given that this term now appears in regulation 13 and 14, as amended, by the Regulations.

**[2] Paragraph 13(1)(b)**

Item [2] gives effect to the obligation in paragraph 5 of resolution 1916 by providing that making assets available in a circumstance to which paragraph 5 of resolution 1916 applies does not contravene the regulation. It does so by substituting paragraph 13(1)(b), with the effect that the making available of an asset to a designated person or entity which, (i) is not authorised by a permit under regulation 15; or (ii) does not occur in a circumstance to which paragraph 5 of resolution 1916 applies is a contravention of the regulation.

A Note to new paragraph 13(1)(b) provides that paragraph 5 of resolution 1916 describes the circumstances as follows: ‘the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations, its specialized agencies or programmes, humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance, or their implementing partners’.

**[3] After subregulation 13(1)**

Item [3] provides a mechanism, where necessary, for interpreting the application of paragraph 5 of resolution 1916 to a particular circumstance. It does so by inserting a

new subregulation 13(1A) which provides that for the purpose of determining whether paragraph 5 of resolution 1916 applies to a circumstance, regard may be had to advice, or an opinion, or a recommendation given or made by the Committee established under paragraph 11 of resolution 751.

**[4] Paragraph 14(1)(c)**

Item [4] gives effect to the obligation in paragraph 5 of resolution 1916 by providing that making assets available in a circumstance to which paragraph 5 of resolution 1916 applies does not contravene the regulation. It does so by substituting paragraph 14(1)(c), with the effect that it is a contravention of the regulation to use or deal with a controlled asset in such a way as: (i) is not authorised by a permit under regulation 15; or (ii) does not occur in a circumstance to which paragraph 5 of resolution 1916 applies.

A Note to new paragraph 14(1)(c) provides that paragraph 5 of resolution 1916 describes the circumstances as follows: ‘the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia, by the United Nations, its specialized agencies or programmes, humanitarian organizations having observer status with the United Nations General Assembly that provide humanitarian assistance, or their implementing partners’.

**[5] After subregulation 14(1)**

Item [5] provides a mechanism, where necessary, for interpreting the application of paragraph 5 of resolution 1916 to a particular circumstance. It does so by inserting a new subregulation 14(1A) which provides that for the purpose of determining whether paragraph 5 of resolution 1916 applies to a circumstance, regard may be had to advice, or an opinion, or a recommendation given or made by the Committee established under paragraph 11 of resolution 751.